

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ROBERT FRANK SMITH, *et al.*,

Plaintiffs,

VS.

Deputy Warden HILL, et al.,

Defendants.

NO. 5:16-CV-00333-MTT-CHW

ORDER

Plaintiffs Robert Frank Smith and David Cordova, inmates currently incarcerated at the Hancock State Prison in Sparta, Georgia, have filed a *pro se* Complaint with the Court pursuant to 42 U.S.C. § 1983 (ECF No. 1), complaining about various issues related to their incarceration and purporting to represent a class of “all others similarly situated.” Plaintiff Smith alone has signed the Complaint; in addition, only Plaintiff Smith has filed a motion to proceed *in forma pauperis* (ECF No. 2). Plaintiff Smith has also filed a motion for an injunction (ECF No. 6), a motion to amend the complaint (ECF No. 7), a motion to amend his motion for preliminary injunction (ECF No. 8), and a motion for the Court to “invoke state court pendent jurisdiction” (ECF No. 9); it is unclear whether Plaintiff Cordova intends to join in any or all of these motions.

The Prison Litigation Reform Act of 1995 (the “PLRA”) requires that a prisoner bringing a civil action *in forma pauperis* be responsible for this Court’s filing fee. 28

U.S.C. § 1915(b). The Eleventh Circuit Court of Appeals has held that prisoners proceeding *in forma pauperis* are not allowed to join together as plaintiffs in a single lawsuit and pay only a single filing fee. Instead, each prisoner must file his own lawsuit and pay the full filing fee. *Hubbard v. Haley*, 262 F.3d 1194, 1198 (11th Cir. 2001). As the Eleventh Circuit in *Hubbard* noted, requiring each plaintiff to pay the full filing fee is consistent with Congress's purpose of imposing costs on prisoners to deter frivolous suits. *Id.* at 1197-98.

Further, to the extent Plaintiffs seek to bring their claims as a class action on behalf of their fellow inmates, a *pro se* Plaintiff may not represent the interests of other prisoners. *See e.g., Wallace v. Smith*, 145 F. App'x 300, 302 (11th Cir. 2005) (per curiam) (citing *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir.1975) (finding it “plain error to permit [an] imprisoned litigant who is unassisted by counsel to represent his fellow inmates in a class action”)). And to the extent the Complaint can be construed as indicating that *pro se* Plaintiff Smith is representing Plaintiff Cordova, this same principle would likewise prohibit such representation. *See Massimo v. Henderson*, 468 F.2d 1209, 1210 (5th Cir. 1972) (per curiam) (affirming dismissal of the portion of prisoner’s complaint that sought relief on behalf of prisoner’s fellow inmates).¹

Applying these principles to the case at hand, Plaintiffs are not permitted to proceed

¹In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent the decisions of the former Fifth Circuit rendered prior to October 1, 1981.

in forma pauperis. As it does not appear Plaintiffs' claims would be barred by the applicable statutes of limitations if they are required to refile their claims, they are **DISMISSED WITHOUT PREJUDICE** and all pending motions are **DENIED as moot**. Each Plaintiff may file a separate complaint, in which he asserts only claims personal to him, if he so chooses. Each Plaintiff should also either pay the filing fee or submit a proper motion to proceed *in forma pauperis*.

SO ORDERED, this 18th day of August, 2016.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT